



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2009 REGULAR SESSION

HOUSE BILL NO. 414

AS ENACTED

FRIDAY, MARCH 13, 2009

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to pharmacy audits.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304
IS CREATED TO READ AS FOLLOWS:

(1) As used in Sections 1 to 3 of this Act, unless the context otherwise requires:

(a) "Administrator" has the meaning provided in KRS 304.9-051;

(b) "Auditing entity" means an insurer or an administrator that conducts or
arranges for the performance of an audit of a pharmacy's records for the
purpose of determining compliance with pharmacy benefit requirements;
and

(c) "Insurer" has the meaning provided in KRS 304.17A-005.

(2) A provider agreement or provider contract between a pharmacy and an insurer,
an agency of the Commonwealth, a pharmacy benefits administrator, or a
pharmacy benefits manager that allows an audit of the pharmacy's records by an
auditing entity shall comply with Sections 2 and 3 of this Act.

➔SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304
IS CREATED TO READ AS FOLLOWS:

When an audit of the records of a pharmacy is conducted by an auditing entity, it shall
be subject to the following conditions:

(1) The auditing entity shall give at least thirty (30) days' written notice to the
pharmacy prior to conducting the audit for each audit to be conducted;

(2) An audit performed by the auditing entity that involves clinical or professional
judgment shall be conducted in consultation with a pharmacist;

(3) A pharmacy may use the records of a hospital, physician, or other practitioner as
defined in KRS 217.015(35), or transmitted by any means of communication, for
purposes of validating pharmacy records with respect to orders or refills of a
drug;

- 1 (4) The recoupment of claims shall be based on the actual overpayment or
2 underpayment of claims unless the pharmacy agrees to a settlement to the
3 contrary;
- 4 (5) A pharmacy shall be audited under the same standards and parameters as other
5 similarly situated pharmacies audited by the auditing entity;
- 6 (6) The period covered by the audit shall not exceed two (2) years from the date the
7 claim was submitted for payment except if a longer period is allowed by federal
8 law or if there is evidence of fraud;
- 9 (7) An audit shall not be scheduled during the first seven (7) calendar days of any
10 month, unless consented to by the pharmacy;
- 11 (8) A preliminary audit report shall be delivered to the pharmacy within one hundred
12 twenty (120) days after the exit interview;
- 13 (9) A final audit report shall be delivered to the pharmacy within six (6) months after
14 receipt of the preliminary audit report or after all appeals have been exhausted,
15 whichever is later;
- 16 (10) The auditing entity shall allow a pharmacy at least thirty (30) days following
17 receipt of the preliminary audit report to produce documentation to address any
18 discrepancies found during an audit;
- 19 (11) The final audit report shall provide claim-level detail of the amounts and reasons
20 for each claim recovery found due. If no amounts have been found due, the final
21 audit report shall so state;
- 22 (12) The auditing entity shall not receive payment based on a percentage of the
23 amount recovered in an audit; and
- 24 (13) The auditing entity shall conduct an exit interview at the close of the audit. The
25 exit interview shall be conducted at a time agreed to by the audited pharmacy.
26 The interview shall provide the audited pharmacy an opportunity to:
27 (a) Respond to questions from the auditing entity;

1 (b) Review and comment on the initial findings of the auditing entity; and

2 (c) Provide additional documentation to clarify the initial findings of the
3 auditing entity.

4 ➔SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304
5 IS CREATED TO READ AS FOLLOWS:

6 (1) The auditing entity conducting an audit shall establish an appeals process under
7 which a pharmacy may appeal a final audit report. The auditing entity shall
8 provide to the pharmacy, prior to or at the time of the delivery of the preliminary
9 audit report, a written explanation of the appeals process, including the name,
10 address, and phone number of the person to whom the appeal should be
11 addressed.

12 (2) Following the appeal if it is determined that an audit report or any portion
13 thereof is unsubstantiated, the audit report or unsubstantiated portion shall be
14 dismissed without the necessity of further proceedings.

15 (3) The auditing entity shall not recoup disputed funds or collect interest on disputed
16 funds until the final internal disposition of the audit, including the appeals
17 process set forth in subsection (1) of this section.

18 ➔SECTION 4. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304
19 IS CREATED TO READ AS FOLLOWS:

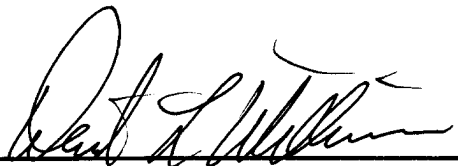
20 Sections 1 to 3 of this Act shall not apply to any audit conducted by or on behalf of a
21 state agency or a Medicaid managed care organization pursuant to KRS Chapter 205.

22 ➔SECTION 5. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304
23 IS CREATED TO READ AS FOLLOWS:


24 Sections 1 to 3 of this Act shall not apply to any audit conducted in which an allegation
25 of fraud, willful misrepresentation, or abuse is made by the auditing entity regarding
26 the audited pharmacy.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date March 24, 2009